**PASTOR AKIN OLATUNJI**

**V.**

**MR. OLUWOLE AKINGBASOTE AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 27TH DAY OF JANUARY, 2015

CA/AK/270/2013

**LEX (2015) - CA/AK/270/2013**

OTHER CITATIONS

2PLR/2015/122 (CA)

(2015) LPELR-24275(CA)

**BEFORE THEIR LORDSHIPS**

MOJEED ADEKUNLE OWOADE, JCA

MOHAMMAD AMBI-USI DANJUMA, JCA

JAMES SHEHU ABIRIYI, JCA

**BETWEEN**

PASTOR AKIN OLATUNJI - Appellant(s)

AND

1. MR.OLUWOLE AKINGBASOTE

2. MR. ODUNMORAYO AKINGBESOTE

3. MR. OLUSOLA AKINGBASOTE (For themselves and on behalf of late Mr. Rufus Olatuji Akingbasote's Family) - Respondent(s)

**ORIGINATING COURT**

ONDO STATE HIGH COURT SITTING AT AKURE

**REPRESENTATION**

KEMISOLA AJAYI - OBAFEMI Esq. - For Appellant

AND

O. J. JEJELOLA ESQ. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CUSTOMARY LAW – YORUBA FAMILY SYSTEM- HEAD OF FAMILY: How the head of a family emerges – Whether by consensus or birth right – Complaint against family head – Whether ground for de-recognition as such - Whether a non-member of family can be recognised as Head of family - Rights, powers and privileges of the Head of family – limits of the powers of the Head of the family vis a vis branches (stirpes) and members of the family – Proper mode of making binding decisions regarding family property

CUSTOMARY LAW – YORUBA FAMILY SYSTEM – FAMILY PROPERTY: The powers the family Head over family property – Rights of branches or stirpes of a family over dealings concerning family property

CUSTOMARY LAW – YORUBA FAMILY SYSTEM – SHARING OF FAMILY PROPERTY – ‘IDI IGI’ AND ‘ORI OJORI’ MODES: How a mode of sharing family property is arrived at –Head of the family - Whether has exclusive discretion to choose a sharing mode or change one already chosen

CUSTOMARY LAW – FAMILY PROPERTY –INCORPORATED COMPANY:- Whether assets owned by an incorporated company can be shared under customary law principles – Relevant considerations

CUSTOMARY LAW – YORUBA FAMILY SYSTEM – RULES GUIDING SUCCESSION: Customary Law rules of succession and inheritance the under Yoruba family system – Preservation of the founder’s house

COMPANY LAW - INCORPORATION AND WINDING UP OF A COMPANY: Legal implications of incorporation – Winding up – Proper treatment of assets of incorporated company which had been wound up

COMPANY LAW - LEGAL PERSONALITY:- Property and assets held by a company – Whether subject to the customary law of succession of its promoters – Proper procedure for dealing with the properties and assets of a company

REAL ESTATE AND PROPERTY LAW:- Properties and assets of an incorporated company – Whether subject to customary laws of succession and inheritance – Proper treatment of

ESTATE ADMINISTRATION AND PLANNING:- Intestacy – Yoruba customary family law – Recognised modes of sharing the assets of deceased person – Head of family – Role of – Founder’s house – Proper treatment of

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE – PLEADING:- Evidence of party which contradict his pleadings – Whether can be relied upon

**MAIN JUDGMENT**

JAMES SHEHU ABIRIYI, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the judgment of the Ondo State High Court sitting at Akure. Both parties are brothers who are not agreed as to who is the head of the family after the death of their father and the mode of distribution of the property of their late father. The Respondents were the Plaintiffs at the Lower Court. The Appellant was the defendant. The claim of the Respondents at the Lower Court was for the following:

(a) A declaration that all the properties of Late MR. RUFUS OLATUNJI AKINGBASOTE (Deceased) comprising of both corporeal and incorporeal hereditaments viz:- The deceased houses at No. 2, Eruoba Titun Street, Akure, No. 34, Danjuma Road, Akure, undeveloped land of about 6.12 Hectares situate at ASIWO Comp, Akure - Owo express Road, Akure and all his shares in the Nigeria Bottling Co.; Intercontinental Bank Plc.; Access Bank Plc; Union Bank Plc. And Tropical Petroleum Product Ltd.; are the joint properties inherited under the Idanre native law and custom by all the children of the said deceased who died intestate on the 14th day of July, 2005.

(b) A declaration that the defendant has no right to sell, alienate, lease, mortgage, transfer, pledge or assign any of the aforementioned properties without the consent of all the plaintiffs.

(c) A declaration that all the original title deeds of all the aforementioned properties which are now in possession and custody of the defendant be surrendered and handed over forthwith to the plaintiffs' family for the safe keep with the WMA Bank Plc., Akure which is the Banker's of the plaintiffs' family.

(d) An order of the Honourable Court that the defendant should render account of the proceeds of sales of the uncompleted building of the said Late Ar. Rufus Olatunji Akingbasote situate at Oba-Ile Akure which was sold by the defendant without the consent and knowledge of the plaintiffs sometimes in 2006 the proceeds of which was not paid into the plaintiffs' said family Bank Account by the defendant till date.

(e) An order of the Honourable Court that the defendant should render account of the sum of N200,000.00 (Two Hundred Thousand Naira only) collected by him at No. 34, Danjuma Street, Akure from Mr. Ogunfunmiloye sometime in July, 2008 who is one of the tenant of the plaintiffs' family, the said sum of which was never paid into the said plaintiffs' family Bank Account by the defendant till date.

(f) An order of the Honourable Court dividing all the aforementioned properties of the said deceased into four equal parts in accordance with the 'Idi Igi' mode of succession to all the children of the said deceased.

(g) An order of perpetual injunction restraining the defendant his agents, assigns or any other person or persons acting through or underhim from any act of control, management, supervision and/or having anything to do with all the aforementioned properties of the said deceased forthwith."

According to the 2nd Respondent (Pw2), after the burial of their father, they had a meeting in the presence of their uncle (Pw3) and agreed that house rent for one of the houses be paid into a bank account.

The Appellant who is the eldest child went to the house in which title deeds were kept and broke open the cabinet and took the title deeds away.

About two years later the Appellant went to Akure to sell the house at Eru-Oba.

Some property of the late father, cocoa plantations and rents from a house were shared among the children.

He denied that the Appellant is the head of the family.

The case of the Appellant however, was that as first son he did not need the consent of the Respondents, his younger brothers to deal with family property because he is the head of the family. When their father died, he stepped into his shoes.

The original documents for their late father's (property) properties are with him.

When their father died on 14/7/05, he was informed and he came to Akure. He went to the house where the title deeds were kept, locked up the cabinet and took the keys to Lagos. He did not break open the cabinet as claimed by the Respondents.

Respondents were part of an agreement to sell one uncompleted building. Respondents rented property at No 34 Danjuma to Ogunfumiloye without his approval.

Although the Appellant had counterclaimed against the Respondents the counterclaim was later withdrawn.

After considering the evidence led by both parties and addresses of learned counsel for the parties, the Lower Court in a considered judgment entered judgment in favour of the Respondents.

The Appellant has appealed against the judgment upon eight grounds. He has however formulated four issues from the eight grounds of appeal. The four issues are reproduced immediately hereunder:

"(i) Whether the learned trial judge properly directed himself in law in holding that properties of Roakin Company Nig. Ltd (an incorporated company) devolve, in accordance with Idanre Customary practice, jointly on the children of late Rufus Olatunji Akingbasote (a director in the company) who died intestate when the company is still a going concern with a Board of Directors and has not been wound up.

(ii) Whether or not Roakin Company Nig. Ltd, a company registered under the Company and Allied Matters Act is a distinct personality from its promoter or directors and as such not subject to Idanre customary practice.

(iii) Whether the judge properly directed himself in law when he held that the defendant, the eldest child of the family of late Rufus Olatunji Akingbasote, is not the head of the family and issued an injunction restraining him from further interference or meddling with the administration of the family properties, thereby occasioning a breach of the Appellant's right under the native law and custom.

(iv) Whether the learned trial judge did not err in law when he held that the applicable law to the distribution estate of an intestate is the Idi-igi system and not Ori Ojori and thereby occasioned miscarriage of justice.

The Respondents on their part formulated the following three issues:

“1. Whether having regard to the facts and evidence adduced by the parties at the trial in this case, the trial judge was right in holding that all the properties of Late Mr. Rufus Olatunji Akingbasote both corporate and incorporate are the joint properties of his children and to be administered in accordance with the Native Law and Custom of Idanre.

2. Whether the trial judge was right in holding that Pw3, Mr. Samuel Akinleye is the Head of the family of Late Rufus Olatunji Akingbasote and not the Appellant.

3. Whether from the facts of this case and the totality of evidences adduced by the Respondents, the trial judge was right in holding that the Idi-Igi method of distribution of estate of Late Rufus Olatunji Akingbasote is fairer, equitable and just in the instant case."

Arguing issues 1 and 2, learned counsel for the Appellant wondered how the learned trial Judge having found that some of the properties belong to Roakin Company Nigeria Ltd a company incorporated in Nigeria would still hold that such properties are subject to Customary Law.

He submitted that the personality of an incorporated company is distinct from its promoters/director. He referred the Court to *Salomon v Salomon & Co. (1872) AC 22 Macaura v. Northern Assurance Co. Ltd (1925) AC 619 Section 37 of the Companies And Allied Matters Act Cap C 20 LFN 2004, CDBI v. COBEC (Nigeria) Ltd (2004) 13 NWLR (Pt.948) 376, Union Bank (Nigeria) Ltd v Penny - Mart Ltd (1992) 5 NWLR (Pt 240) 228 at 237 and Habib (Nig) Bank Ltd v. Ochete (2001) 3 NWLR (Pt.699) 114*. It was submitted that from the moment a business name is incorporated into a liability company, it legally assumes a separate and distinct personality from its members. From that moment, it could own property and accept transfer of assets and liability in its corporate name.

It was submitted that Roakin Company Nigeria Ltd is alive, functioning properly with all its structures in place and has not transferred any of its assets to any individuals, neither was it joined as a party to this suit. Yet the Lower Court held that these assets can still be administered under the Native Law and Custom of Idanre. We were referred to *Shotunumu v. Ocean Steamship Nig. Ltd (1987) 3 NWLR (Pt 66) 691, Vassilar v. Paas Industries Ltd (2002) FWLR (Pt.19) 418 Kwara Investment Co. Ltd v. Garuba (2000) FWLR (Pt.2) 198 and Isolara v. U. B. N. (1996) 12 SCNJ 445.*

The learned trial Judge, it was submitted, held that Roakin Company Nigeria Ltd had two Directors including the late Rufus Olatunji Akingbasote. That the company is left now with a single Director and that the company may be wound up and its assets monetized and paid into the Estate Account to be distributed according to Idanre Native Law and Custom.

It was submitted that the assets of Roakin Company Nigeria Ltd are not and cannot be part of the estate of Late Rufus Olatunji Akingbasote (a Director in the Company) capable of being inherited by his children in accordance with Idanre Customary Law as ordered by the Lower Court. We were referred to *Okolo v. U.B.A. N Ltd (2004) 3 NWLR (Pt.859) 87 and Okoli v. Morecab Finance Ltd (2007) 30 (Pt.1) NSCQR 453.*

We were urged to resolve issues 1 and 2 in favour of the Appellant.

On issue 3, it was submitted that Idanre is one of the many Yoruba communities in Ondo State. Late Rufus Olatunji Akingbasote was a Yoruba man. Idanre where Late Rufus Olatunji Akingbasote hailed from shares similar customary practices with other parts of Yoruba land in respect of succession and inheritance.

On Yoruba Customary Law of succession the Court was referred to *Lewis v. Bankole (1909), NLR 18.* It was submitted that "Idi - Igi" is an integral part of the Yoruba Native Law and Custom relating to distribution of intestates estate but that the head of the family had the discretion to adopt "Ori Ojori" mode of distribution. We were referred to *Danmole v. Dawodu (1962) 1 ALL NLR 702, Salako v. Salako (1965) LLR 136 and Olowu & Ors v. Olowu & Ors (1985) 3 N.N.L.R. (Pt.13) 372.*

It was submitted that inspite of the authorities which state that the eldest son "Dawodu" becomes the head of the family and takes over the management of the estate of the deceased for himself and other children, the Lower Court held that the Appellant is not the head of the family and restrained him from meddling with the management of the estate of his father.

It was submitted that the mere fact that the Appellant preferred the "Ori Ojori" mode of distribution to the "Idi igi" mode and the fact that some of the Respondents said they did not trust him do not disqualify him as the head of the family.

There was no other person contesting the position of head of the family, it was submitted. That 1st Respondent mentioned one Akinleye as the family head but that the said Akinleye who testified said that he is from Akure while the late father of the Appellant and his siblings were from Idanre. Yet the Lower Court held that the position of the head of the family is not vacant in that it resided with the said Samuel Akinleye.

It was submitted that the position of the head of the family of late Rufus Olatunji Akingbasote is the exclusive right of the Appellant under the Idanre Native Law and custom and the Lower Court cannot deny same to him.

The Court was urged to resolve this issue in favour of the Appellant.

Learned counsel for the Appellant rightly observed that issue 4 had already been addressed, under issue 3. It was submitted that once the head of the family has chosen one of the two modes of distribution then the one chosen prevails.

Learned counsel for the Respondents submitted that the Lower Court was right in holding that all the properties of the Late Rufus Olatunji Akingbasote both corporate and incorporate are the joint properties of his children and to be administered in accordance with the native law and custom of Idanre. He submitted that it is good law that the children of a deceased person on intestacy succeed to his properties whether corporate or incorporate and same can be distributed according to Native Law and Custom of the deceased once the deceased dies intestate and no letter of administration is obtained. We were referred to *Graig v. Graig & Ors (1967) NMLR 52; Onayemi v. Okunubi NWLR 119 and Bolaji & Ors v. Akapo & Ors (1968) NMLR 203.*

It was submitted that the suit did not fall within the concept of corporate personality but bothers on the mode of distribution of the assets of the deceased in the said Roakin Nig. Ltd. It was contended that it did not matter how the deceased acquired the property either in the name of Roakin Nigeria Ltd or in any other form as long as he was the sole owner and had absolute control over it during his lifetime. We were referred to *Miller Bros (Liverpool) Ltd v. Ayeni (1924) 3 NLR 42.*

It was submitted that the contentions on issues 1 and 2 of the Appellant's brief of argument are misconceived and erroneous.

On issue 2, it was submitted that the Lower Court was right when it held that the Pw3 Samuel Akinleye was the head of the family of Late Rufus Olatunji Akingbasote and not the Appellant. It was submitted that the entire evidence adduced before the Lower Court shows that the Appellant is not and has never been chosen as the family head of the Respondents' family. Reference was made to the judgment of the Lower Court. Exhibits A1, A2, A3 and C1, C2 and C3 did not contain anything to show that the Appellant is the head of the family of the Respondents but one of the representatives of the four branches of the said family and nothing more.

Learned counsel for the Respondents submitted that the Lower Court was justified in holding that the "Idi Igi" mode of distribution of the estate of the Late Rufus Olatunji Akingbasote is fairer, equitable and just and that the parties had adopted the "Idi Igi" mode of distribution. Evidence of PW1-4 and DW1 established that Appellant and Respondents Adopted the "Idi Igi" mode of distribution and that virtually all the properties of the deceased had been shared into four parts according to the four wives of the deceased.

The Court was also referred to Exhibits A1, A2 and A3 and C1, C2 and C3 which show the selection of one person from each of the wives of their deceased father.

It was submitted that where a person has consented to a particular cause or event or actions, he cannot later be heard to complain. We were referred to *C.B.N. v. S.A.P.N (2004) 37 W R N 103 at 136.* It was submitted that the argument of the Appellant that the "Ori-Ojori" mode of distribution is fairer and equitable to all the children is belated, misconceived and does not meet the justice of this case where most of the properties had earlier on been distributed under "Idi Igi" mode of succession.

Replying on points of law, learned counsel for the Appellant submitted that the case of *Miller Bros Liverpool (supra)* relied upon by the Respondents is not application to this case.

I am of the view that this appeal should be determined on the issues presented by the Appellant for determination. I will therefore determine the appeal on the said issues.

The rules of succession and inheritance among the Yoruba people include the following:

a) When the founder of the family dies, the eldest surviving son called the "Dawodu" succeeds to the headship of the family and this includes the residence and giving of orders in his father house or compound;

b) If there is going to be any important dealing with family property, all branches of the family must be consulted and representation on the family council is per stirpes (branch) according to the number of wives with children;

c) The division is into equal shares between the respective branches regard being had to any property already received by any of the founder's children during his life-time; and

d) The founder's compound is usually regarded as the 'family house' which must be preserved for posterity. See Otun v. Otun (2004) 14 NWLR (Pt.893) 381 and Falomo v. Onakanmi (2005) 11 NWLR (Pt 935) 126.

An incorporated company is a creature of law clothed with independent legal personality from the moment of incorporation, distinct and separate from those who labored to give birth to it. It is capable of acquiring, holding and alienating property, both movable and immovable. If a company is wound up the assets of the company must first of all be identified and settled. Subsequently, the Court can then order the sharing of the remaining assets (if any) among the parties entitled thereto. See, Marina Nominees Ltd v. Federal Board of Inland Revenue (1986) 2 NWLR (Pt 20) 48 Wilt & Busch Ltd v. Goodwill & Trust Inv. Ltd (2004) 8 NWLR (Pt 874) 179 and Okafor v. Igwilo (1997) 1 NWLR (Pt.527) 36 at 39.

The Respondents pleaded in paragraph 28 of the Statement of Claim that undeveloped land was bought in the name of their deceased father who later got two different statutory rights of occupancy thereto in the name of Roakin Company Nigeria Ltd which was incorporated by the deceased as the Chairman/Managing Director with some of his children as Directors.

None of the witnesses (PW1 - PW4) testified one jot in support of this averment.

Inspite of this the Lower Court at page 85 of the record of appeal stated thus:

"I find as a fact that the Late Akingbasote was a Director of Roaking (sic) Nigeria Ltd and one of the wives was a co-Director."

No witness called by the Respondents adduced evidence to the effect that the Deceased father of the parties and one of the wives were the Directors of the Company. Even if such evidence was led, that would have been contrary to the facts pleaded in paragraph 28 of the Statement of Claim wherein the Respondents pleaded that their deceased father and some of his children were the Directors of the company.

Although the Respondents never claimed that the company be wound up and its assets distributed according to native law, the Lower Court at page 92 of the record of appeal stated thus:

"Earlier in this judgment, I held that Roakin Nigeria Ltd has only two Directors including Late Akingbasote. I have held earlier in this judgment that the company may be wound up and its assets monetized and paid into the Estate Account and to be distributed according to Idanre Native Law and Custom."

There was no basis for the foregoing Findings/holdings. It is therefore not surprising that inspite of the above findings/holdings of the Lower Court it made no order to the effect that the company be wound up and the assets monetized and be distributed according to Native Law and Custom.

Even if there was such a claim by the Respondents, that claim would not have been sustained. A company is a distinct legal personality different from those who labored to give birth to it. It is capable of acquiring and holding property. Therefore the property of the Company is not the property of the deceased father of the parties in this case. The properties of the company cannot be dealt with as held above by the Lower Court. The procedure for dealing with the company and its property is as provided for in the Company Law.

From the foregoing, I am of the view that issues 1 and 2 be resolved in favour of the Appellant. I accordingly resolve the two issues in favour of the Appellant.

The Respondents pleaded in paragraph 5 of the Statement of Claim that the Appellant was the eldest son of their late father. But Pw1 and Pw2 in their evidence in Court said the Appellant is not the head of the family. Pw1 went further to say that one Akinleye who Pw2 said is their big uncle is the head of the family. Mr. Akinleye who testified as Pw3 never claimed to be the head of the family.

The Lower Court found that the Pw3 who Pw2 called big uncle was the head of the family. The Lower Court did not state under which native law and custom the Pw3 who was not the eldest child or brother of the parties in the case became the head of the family. On the authorities, it is the eldest son "Dawodu" who succeeds the late father as head of the family. Another person cannot be brought in not even a big uncle as the head of the family as the Respondents pretend to have done in this case. The Lower Court tried to justify its decision by noting complaints made against the Appellant which showed that the Appellant was not worthy of being the head of the family. He did not show that under Yoruba native law and custom if there is any complaint against the eldest son, then anybody not even another son of their late father could be made the head of the family. Having failed to do so, his finding that Pw3 is the head of the family because of purported complaints made against him had no basis.

The Lower Court stated further thus:

"The Headship of the family is by popular demand from the Plaintiffs."

Although it is difficult for me to understand what this means, I hasten to say that this is not an established Yoruba native law and custom. The Lower Court failed to show his authority for the above finding. It was not pleaded that the headship of the family is by popular demand and no such evidence was led in proof thereof.

In spite of the settled position of the law, the Lower Court in a round-about way found reasons to exclude the Appellant from the headship of the family a position which rightly belongs to him.

It is clear from the foregoing that issue 3 should be resolved in favour of the Appellant. It is accordingly hereby resolved in his favour.

It should be noted that if there is going to be any important dealing with family property all the branches of the family must be consulted. See Otun v. Otun (supra).

In the instant case, the family of the late Akingbasote had agreed on the mode of sharing the assets of the late head of the family. The assets had been shared substantially by the "Idi Igi" mode. In my view the choice of mode of distribution is a very important one in respect of the family property. The family having chosen one mode of distribution, the Appellant cannot alone be allowed to alter the mode for the other "Ori Ojori" mode of distribution as he sought to do in this case.

Issue 4 should therefore be resolved in favour of the Respondents. It is accordingly resolved in favour of the Respondent.

The appeal therefore succeeds in part.

The properties of the Estate of the late Akingbasote shall be distributed among the beneficiaries of the Estate by the "Idi Igi" mode of distribution.

The order of the Lower Court restraining the Appellant from the administration of the Estate is hereby set aside.

Since this is a family disagreement, I make no order as to costs.

**MOJEED ADEKUNLE OWOADE, J.C.A.:**

I read in draft the Judgment Delivered by my learned brother **James Shehu Abiriyi, JCA**.

I agree with the conclusion and I also abide with the consequential orders,

**MOHAMMED AMBI-USI DANJUMA, J.C.A.:**

I agree that the appeal be allowed in part only and in terms of the leading Judgment, which I adopt including the order relating to costs.